

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

R. H.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2010091029

DECISION

Amy C. Lahr, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 28, 2011, in Culver City, California.

R. H. (Claimant) was represented by her mother.¹ Claimant was not present at the hearing.

Julie A. Ocheltree represented the Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision at the close of hearing.

¹ Initials have been used to protect Claimant's privacy.

ISSUE

The question to be decided is whether WRC should reimburse Claimant, in the amount of \$22,471.77, for residential costs incurred at the New England Center for Children, paid by Claimant's parents.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-13; Claimant's exhibits C1-C30.

Testimonial: Lisa Basiri, WRC Fair Hearing Coordinator; Debra Ray, WRC Director of Client Services; Aurora Lorenzo, WRC Senior Revenue Coordinator; James Huyck, Public Benefits Consultant/Advocate; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 19-year-old female who qualifies for regional center services, based on an Autism diagnosis.
2. In April 2008, Claimant began attending school at the New England Center for Children (NECC), in Southborough, Massachusetts. Claimant's parents chose this school for Claimant because her behaviors at home were no longer manageable, and there was no school within California which could meet Claimant's needs.
3. Claimant's parents requested that WRC fund \$14,000 of Claimant's monthly tuition at NECC. WRC agreed to fund a portion of that amount, minus an anticipated benefit, also known as the "board and care" rate, from the Social Security Administration (SSA). By letter dated July 10, 2008, WRC agreed "that effective July 1, 2008[, WRC] will fund \$14,000 per month (minus the portion that SSI/SSA benefits cover) for [Claimant]'s placement at [NECC]."
4. Former WRC Director of Client Services, Mary Rollins, represented to Claimant's parents that Claimant would be eligible to receive a monthly SSA benefit. Based on the rate for 2008, WRC estimated that Claimant would be eligible to receive \$928 in Social Security Income (SSI). Claimant's parents paid this portion of Claimant's tuition, with the expectation that SSA would repay them once SSA determined Claimant's eligibility.
5. Claimant's Individual Program Plan (IPP) dated February 4, 2009, stated the following under "Desired Outcomes" of Claimant's "Living Arrangement": "Westside Regional Center will fund a total of \$13,072/mo towards the board and care cost of [Claimant]'s residential program through The New England Center for Children minus social

security benefits from April 1, 2009 through March 31, 2010. Family has agreed to fund the portion of the SSI payment until benefits are activated.”²

6. The following year, Claimant’s behaviors worsened, and NECC requested that Claimant be moved to a more intensive setting, which included more supervision, and increased the monthly tuition amount by approximately \$3,000. Claimant’s parents asked WRC to split that cost, and WRC agreed. This agreement was memorialized in Claimant’s IPP dated February 23, 2010. The IPP specifically noted that WRC would not pay an additional \$1,250 per month, for a total of not more than \$14,320 per month.

7. In August 2008, Claimant’s mother filed an application on Claimant’s behalf with SSA. Approximately one month later, SSA denied Claimant’s application. SSA considered Claimant to be part of her parent’s household, even though she was living out-of-state. Thus, SSA considered her parent’s income in determining her eligibility. Because Claimant’s parents have substantial income, SSA found that Claimant was not eligible for SSI benefits prior to her eighteenth birthday.

8. Claimant’s mother filed for reconsideration of SSA’s decision. In a letter dated July 29, 2010, SSA determined that after approximately one month after Claimant’s eighteenth birthday, she was eligible for a monthly benefit amount of \$620.34. The reduced amount was due in part to the fact that Claimant received assistance from her parents for “food or shelter.” Claimant’s mother did not file an appeal of the SSA decision. When questioned about why she did not appeal, Claimant’s mother stated that she did not disagree with SSA’s decision; rather, she understood its reasoning.

9. In September 2010, Claimant’s mother filed a fair hearing request for reimbursement from WRC of the money that they expected to receive from SSA. This amount totaled \$22,471.77, calculated as follows: \$930 per month from July 2008 through March 2010; and \$309.66 per month from April 2010 (when Claimant’s SSI benefits began) through January 2011 (when Claimant stopped attending NECC). (Exh. C30.)

10. By letter dated September 3, 2010, WRC denied Claimant’s mother’s request. The basis for denial was stated as follows:

WRC must approve funding for services prior to the provision of the services; it cannot agree to retroactively fund for services that were provided over the last couple of years. The program planning statutes in the Lanterman Act contemplate agreements between the regional center and the consumer/family about which agencies (including the regional center) will provide or fund needed services prior to the implementation of the IPP, i.e., prior to the

² Claimant’s mother noted that this IPP was not signed by Claimant or her representative. The evidence showed, however, that Claimant’s parents did not dispute the IPP, and all parties proceeded as though it was agreed upon.

provision of services. In addition, regulations prohibit retroactive funding by the regional center, with few exceptions that do not apply here. (See Welfare & Institutions Code sections 4646, subdivisions (d) & (g), 4646.5, subdivisions (a)(4); Cal. Code of Regulations, Title 17, section 50612.)

Social Security Income is a generic support and the Social Security Agency is a generic agency. WRC cannot pay for something that a generic agency should cover. (See Welfare and Institutions Code sections 4646, 4646.4, 4646.5, 4648(a)(8), 4659; California Code of Regulations, Title 17, section 54302, subdivision (a)(31).) In this case, [Claimant]'s placement should have been partially funded by SSI.

11. Debra Ray, Director of Client Services, Lisa Basiri, WRC Fair Hearing Coordinator, and Aurora Lorenzo, WRC Senior Revenue Coordinator, testified at the hearing. In their many years of experience, minors who reside out of the home, such as Claimant, unanimously qualify for the "board and care" rate SSI benefit, without consideration of their parents' income. They were unsure why Claimant's application was denied. Ray's and Basiri's testimony established that funding of Claimant's tuition was conditioned upon WRC's capture of SSI benefits. Their testimony established that it is always WRC's custom and practice to deduct the "board and care" rate SSI benefit from any calculation regarding out-of-home placement. Their testimony also established that prior to the filing of this fair hearing request, Claimant's parents had not formally requested that WRC fund for the shortfall in tuition due to the SSI benefits denial.

12. Claimant's mother testified at the hearing. She contended that WRC agreed to fund \$14,000, minus the SSI benefit; however, because the SSI benefit was initially denied, that WRC should be responsible for that portion. She claims that WRC was responsible for securing the SSI benefits, and setting a timeline within which to do so. Claimant's mother would never have agreed to WRC's deduction of the SSI benefit if it wasn't going to materialize. She presented evidence of the many expenses that were incurred traveling across the country to visit Claimant at school. All evidence has been considered.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal and uphold WRC's decision to deny reimbursement for residential costs incurred at the NECC, as set forth in Factual Findings 1 through 12, and Legal Conclusions 2 through 6.

2. The Lanterman Act, incorporated under Welfare and Institutions Code³ section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. (Welf. & Inst. Code, § 4501.) Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far

³ All further references are to the Welfare and Institutions Code, unless noted.

as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

3. Section 4648, subdivision (a)(8), provides that “[r]egional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

4. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a); 4646.4, subd. (a)(4)).

5. The Lanterman Act does not specifically authorize retroactive reimbursement of service costs to families in the fair hearing context. Regulations prohibit retroactive funding by the regional center, with limited exceptions that are inapplicable here. (Cal. Code Regs., tit. 17, § 50612.)

6. Applying those provisions here, Claimant’s appeal must be denied. WRC agreed to fund a portion of the monthly tuition amount, expecting that SSA would cover the remainder. Regional Center did not, however, agree to make up the shortfall in the event that Claimant was denied SSA benefits. Although Claimant’s parents were assured by WRC that Claimant was eligible for SSA benefits, WRC did not guarantee payment of the full tuition amount in the event that Claimant’s SSA benefits were denied. Claimant’s parents assumed the responsibility of the monthly differential while the SSA determination was pending, and thereafter. They did not request that WRC cover the shortfall until two years after SSA’s initial denial. WRC’s failure to include timelines in Claimant’s IPP does not require reimbursement of the expected SSA benefit amount. Claimant’s parents retain the right to appeal SSA’s decision, and pursue reimbursement through the appropriate generic resource.

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ORDER

Claimant R.H.'s appeal is denied. WRC's denial of reimbursement for \$22,471.77, for residential costs at NECC incurred by Claimant's parents is upheld.

DATED: August 9, 2011

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.